IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5695 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMANLAL AND BROTHERS - Petitioner(s)
Versus
VISNAGAR CO-OPERATIVE BANK LTD & 2 - Respondent(s)

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Appearance :
MR PS CHAMPANERI for Petitioner(s) : 1,
MR RAJESHWAR J DAVE for Respondent(s) : 1,
MR BM MANGUKIYA for Respondent(s) :2-3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 29/06/2006

ORAL JUDGMENT

1. Rule. Learned advocate Shri Dave wavies service of rule on behalf of respondent no.1 and learned advocate Shri Mangukia for respondent nos. 2 and 3.

2. The petitioner herein had borrowed certain sum of money from respondent no.1 bank. Since the petitioner did not repay the amount borrowed, respondent no.1 bank initiated proceedings to recover the same. In this regard a summary suit came to filed before the Board of Nominees being Summary Suit No. 899/03. The petitioner sought leave to defend the suit before the Nominees Court. It may be noted that the suit amount was Rs. 66,83,695/-. The Lavad Court granted permission to the petitioner to defend the suit on the condition of depositing an amount of Rs. 6,70,000/- by order dated 29th October, 2003. Since the petitioner did not fulfill the condition of depositing the amount within the time permitted the Lavad Court granted the decree in favour of respondent no.1 bank on 16th March, 2004. The petitioner appealed against the said judgment and decree before the Co-operative Tribunal. Since there was delay in filing the appeal the petitioner also filed an application for condonation of delay. The Co-operative Tribunal by its impugned order dated 28th February, 2005 was pleased to reject the application of the petitioner seeking condonation of delay in filing the appeal.

3. I have heard learned advocates appearing for the parties. It is not in dispute that the petitioner had not fulfilled the condition for permitting him to defend the suit as imposed by the Board of Nominees. It is also not in dispute that there are several

other suites filed by respondent no.1 bank against the petitioner for different debts. It is equally not in dispute that the appeal of the petitioner was rejected only on the ground of delay.

4. Considering totality of the circumstances of the case, I find that the petitioner should have an opportunity to defend himself before the Board of Nominees. Considering the facts of the case, however, this cannot be done unconditional. It may be recalled that the Board of Nominees on the condition of depositing an amount of Rs. 6,70,000/- permitted the petitioner to defend himself. This condition has not been fulfilled and time has passed since then. Even if the petitioner deserves a chance to defend himself before the Board of Nominees he must deposit certain amount to show his bonafides.

5. Under the circumstances, the decree passed by the Board of Nominees as upheld by the Co-operative Tribunal by rejection of the delay condonation application of the petitioner is quashed. The proceedings are remanded to the Board of Nominees Court for fresh consideration. This entire order is conditional on the petitioner depositing a sum of Rs. 10 lacs to the bank by 15th September, 2006. In the event if the petitioner fails to so deposit the amount, this order will automatically exhaust itself and the decree of the Board of Nominees, as well as, the order passed by the Co-operative Tribunal shall revive. Thereafter it will be open for the bank to

execute the decree without any order from the Court. The Board of Nominees shall proceed with the summary suit only after verifying that the petitioner has fulfilled the above mentioned conditions of depositing the amount before the bank. The amount if deposited, shall be adjusted by the bank upon ultimate outcome of the remand proceedings. The petitioner shall not dispose of, alienate or in any manner create any charge over his immovable properties.

6. With these directions, the petition is disposed of. Rule is made absolute to the above limited extent. No costs.

(Akil Kureshi, J.)

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